IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2888 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NILESH CHABILDAS PAREKH(VANIA)

Versus

POLICE COMMISSIONER

Appearance:

MR PRADEEP PATEL for Petitioner

MR SJ DAVE, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/06/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 25-1-2000 passed by the Police Commissioner, Rajkot City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. Learned advocate for the petitioner has restricted his argument on ground (j) of the petition wherein he has specifically mentioned that petitioner has made a representation to the authority through jail on 24-2-2000 and same has been decided by the authority on 7-3-2000 and, therefore, it is a delay. Learned Addl. Govt. Pleader has fairly admitted the same.

4. In the instant case, it appears that though representation has been sent on 24-2-2000, it remained undecided till 7-3-2000. So, there is a delay. It has been held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. page 684 more particularly at head note which states as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

The Apex Court quoted in the above referred judgment certain portion of a judgment delivered by a Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, which reads thus:

> "It is a constitutional mandate commanding the concerned authority to whom the detenu submits his representation to consider the representation

> and dispose of the same as expeditiously as possible. The words "as soon as may be" occurring in clause (5) of Article 22 reflects the concern of the Framers that the representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there can be no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. There is no period prescribed either under the Constitution or under the concerned detention law, within which the representation should be dealt with. The requirement however, is that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal".

It has been further held by the Apex Court in para 9 as under:

"The position, therefore, now is that if delay
> was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. In the matter before the Supreme Court in Rajammal (supra), it appeared that there was a delay of five days. For that also, explanation has been putforward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that delay of five days is a delay. Whereas in the present case, representation has been made by the detenu on 24-2-2000 which has been decided on 7-3-2000 and there is a delay of 12 days in considering the representation. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents. Therefore, case of the present petitioner is on a much better footing to that of the case before the Supreme

Court. As the representation of the petitioner has not been decided by the authority, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. In view of the above, the petition is allowed. The order of detention dated 25-1-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Nilesh Chabildas Parekh (Vania) is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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